

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 18-92

AMERICAN FEDERATION OF STATE  
COUNTY AND MUNICIPAL  
EMPLOYEES, AFL-CIO

Complainant,

vs.

THE CITY OF HELENA AND BILL  
VERWOLF, CITY MANAGER

Defendant.

RECOMMENDED

ORDER

\* \* \* \* \*

I. BACKGROUND AND DISCUSSION

The above matter comes on as a result of a charge filed with the Board of Personnel Appeals on November 18, 1991. The charge alleged violations of 39-31-305 MCA, 2-18-612 MCA, 2-18-618 MCA and "Section Code 81-1 and 81-2" as well as "any other policy or law pertaining to there [sic] actions".

The thrust of the charge appears to be that the employer violated the labor agreement by charging leave at a rate of 8.5 hours per day. The Union alleges that this results in annual leave accumulation and payout at rates less than required in the contract. This charge appears to be an ongoing violation if in fact there is a violation of the bargaining agreement. If shown to be true this charge would constitute an unfair labor practice founded in 39-31-401 (5) MCA.

The employer has responded to the charge by asserting the matter is covered by the contract and its final and binding

1 arbitration provisions.

2 In ULP 43-81, William Converse v Anaconda Deer Lodge County  
3 and ULP 44-81, James Forsman v Anaconda Deer Lodge County, the  
4 Board of Personnel Appeals adopted National Labor Relations Board  
5 precedent as set forth in Collyer Insulated Wire, 192 NLRB 387,  
6 77 LRRM 1931, deferring certain unfair labor practice proceedings  
7 to an existing negotiated grievance/arbitration procedure. In so  
8 doing the Board removed a possible source of conflict between the  
9 Board of Personnel Appeals and the dispute resolution mechanism  
10 contained within the parties' collective bargaining agreement.

11 This matter has been investigated and upon review by the  
12 Board's investigator it is apparent that the allegations  
13 contained within the union's charges lend themselves to the  
14 grievance mechanism of the contract.

## 15 II. RECOMMENDED ORDER

16 Unfair Labor Practice Charge 18-92 is dismissed without  
17 prejudice to any party and without deciding the merits of the  
18 charge. The Board of Personnel Appeals retains jurisdiction over  
19 this matter for the purpose of entertaining an appropriate and  
20 timely motion for further consideration upon a proper showing  
21 that either: the dispute has not, within a reasonable time, been  
22 resolved pursuant to the parties' negotiated grievance/arbitra-  
23 tion procedure; or the grievance/arbitration proceedings have not  
24 been fair and regular or have reached a result which is repugnant  
25 to the public policy considerations of the Montana Collective

1 Bargaining for Public Employees Act.

2 Dated this 6th day of January, 1998.<sup>2</sup>

3  
4 BOARD OF PERSONNEL APPEALS

5  
6 By: 

7 John Andrew  
Investigator

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9  
10 NOTICE: Exceptions to this Recommended Order must be filed  
11 within twenty (20) days of service thereof. If no exceptions are  
12 filed, this Recommended Order shall become the Order of the Board  
13 of Personnel Appeals. Address exceptions to the attention of the  
Investigator at the Board of Personnel Appeals, P.O. Box 1728,  
Helena, Montana 59624-1728.